

By: Frank

H.B. No. 5

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the powers and duties of the Department of Family and
3 Protective Services and the transfer of certain powers and duties
4 to the Health and Human Services Commission.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 58.0051(a)(2), Family Code, is amended
7 to read as follows:

8 (2) "Juvenile service provider" means a governmental
9 entity that provides juvenile justice or prevention, medical,
10 educational, or other support services to a juvenile. The term
11 includes:

12 (A) a state or local juvenile justice agency as
13 defined by Section 58.101;

14 (B) health and human services agencies, as
15 defined by Section 531.001, Government Code, and the Health and
16 Human Services Commission;

17 (C) the Department of Family and Protective
18 Services;

19 (D) the Department of Public Safety;

20 (E) [~~(D)~~] the Texas Education Agency;

21 (F) [~~(E)~~] an independent school district;

22 (G) [~~(F)~~] a juvenile justice alternative
23 education program;

24 (H) [~~(G)~~] a charter school;

- 1 (I) [~~(H)~~] a local mental health or mental
2 retardation authority;
- 3 (J) [~~(I)~~] a court with jurisdiction over
4 juveniles;
- 5 (K) [~~(J)~~] a district attorney's office;
- 6 (L) [~~(K)~~] a county attorney's office; and
- 7 (M) [~~(L)~~] a children's advocacy center
8 established under Section 264.402.

9 SECTION 2. Section 58.0072(c), Family Code, is amended to
10 read as follows:

11 (c) The Texas Juvenile Justice Department may grant the
12 following entities access to juvenile justice information for
13 research and statistical purposes or for any other purpose approved
14 by the department:

15 (1) criminal justice agencies as defined by Section
16 411.082, Government Code;

17 (2) the Texas Education Agency, as authorized under
18 Section 37.084, Education Code;

19 (3) any agency under the authority of the Health and
20 Human Services Commission; [~~or~~]

21 (4) the Department of Family and Protective Services;
22 or

23 (5) a public or private university.

24 SECTION 3. Section 107.152(c), Family Code, is amended to
25 read as follows:

26 (c) The pre-placement and post-placement parts of an
27 adoption evaluation conducted by a licensed child-placing agency or

1 the department are governed by rules adopted by the [~~executive~~]
2 commissioner of the department [~~Health and Human Services~~
3 ~~Commission~~].

4 SECTION 4. Section 107.159(a), Family Code, is amended to
5 read as follows:

6 (a) Unless otherwise agreed to by the court, the
7 pre-placement part of an adoption evaluation must comply with the
8 minimum requirements for the pre-placement part of an adoption
9 evaluation under rules adopted by the [~~executive~~] commissioner of
10 the department [~~Health and Human Services Commission~~].

11 SECTION 5. Section 107.160(a), Family Code, is amended to
12 read as follows:

13 (a) Unless otherwise agreed to by the court, the
14 post-placement part of an adoption evaluation must comply with the
15 minimum requirements for the post-placement part of an adoption
16 evaluation under rules adopted by the [~~executive~~] commissioner of
17 the department [~~Health and Human Services Commission~~].

18 SECTION 6. Sections 162.304(b-2) and (g), Family Code, are
19 amended to read as follows:

20 (b-2) The [~~executive~~] commissioner of the department
21 [~~Health and Human Services Commission~~] shall adopt rules necessary
22 to implement Subsection (b-1), including rules that:

23 (1) limit eligibility for the subsidy under that
24 subsection to a child whose adoptive family income is less than 300
25 percent of the federal poverty level;

26 (2) provide for the manner in which the department
27 shall pay the subsidy under that subsection; and

1 (3) specify any documentation required to be provided
2 by an adoptive parent as proof that the subsidy is used to obtain
3 and maintain health benefits coverage for the adopted child.

4 (g) The [~~executive~~] commissioner of the department [~~Health~~
5 ~~and Human Services Commission~~] by rule shall provide that the
6 maximum amount of the subsidy under Subsection (b) that may be paid
7 to an adoptive parent of a child under an adoption assistance
8 agreement is an amount that is equal to the amount that would have
9 been paid to the foster parent of the child, based on the child's
10 foster care service level on the date the department and the
11 adoptive parent enter into the adoption assistance agreement. This
12 subsection applies only to a child who, based on factors specified
13 in rules of the department, the department determines would
14 otherwise have been expected to remain in foster care until the
15 child's 18th birthday and for whom this state would have made foster
16 care payments for that care. Factors the department may consider in
17 determining whether a child is eligible for the amount of the
18 subsidy authorized by this subsection include the following:

19 (1) the child's mental or physical disability, age,
20 and membership in a sibling group; and

21 (2) the number of prior placement disruptions the
22 child has experienced.

23 SECTION 7. Section [162.3041](#)(a-1), Family Code, is amended
24 to read as follows:

25 (a-1) Notwithstanding Subsection (a), if the department
26 first entered into an adoption assistance agreement with a child's
27 adoptive parents after the child's 16th birthday, the department

1 shall, in accordance with rules adopted by the [~~executive~~
2 commissioner of the department [~~Health and Human Services~~
3 ~~Commission~~], offer adoption assistance after the child's 18th
4 birthday to the child's adoptive parents under an existing adoption
5 agreement until the last day of the month of the child's 21st
6 birthday, provided the child is:

7 (1) regularly attending high school or enrolled in a
8 program leading toward a high school diploma or high school
9 equivalency certificate;

10 (2) regularly attending an institution of higher
11 education or a postsecondary vocational or technical program;

12 (3) participating in a program or activity that
13 promotes, or removes barriers to, employment;

14 (4) employed for at least 80 hours a month; or

15 (5) incapable of doing any of the activities described
16 by Subdivisions (1)-(4) due to a documented medical condition.

17 SECTION 8. Subchapter A, Chapter 261, Family Code, is
18 amended by adding Section 261.004 to read as follows:

19 Sec. 261.004. REFERENCE TO EXECUTIVE COMMISSIONER OR
20 COMMISSION. In this chapter:

21 (1) a reference to the executive commissioner or the
22 executive commissioner of the Health and Human Services Commission
23 means the commissioner of the department; and

24 (2) a reference to the Health and Human Services
25 Commission means the department.

26 SECTION 9. Section 263.009(a), Family Code, is amended to
27 read as follows:

1 (a) The department shall hold a permanency planning meeting
2 for each child for whom the department is appointed temporary
3 managing conservator in accordance with a schedule adopted by the
4 ~~[executive]~~ commissioner of the department ~~[Health and Human~~
5 ~~Services Commission]~~ by rule that is designed to allow the child to
6 exit the managing conservatorship of the department safely and as
7 soon as possible and be placed with an appropriate adult caregiver
8 who will permanently assume legal responsibility for the child.

9 SECTION 10. Subchapter A, Chapter 264, Family Code, is
10 amended by adding Section 264.0011 to read as follows:

11 Sec. 264.0011. REFERENCE TO EXECUTIVE COMMISSIONER OR
12 COMMISSION. In this chapter:

13 (1) a reference to the executive commissioner or the
14 executive commissioner of the Health and Human Services Commission
15 means the commissioner of the department; and

16 (2) a reference to the commission or the Health and
17 Human Services Commission means the department.

18 SECTION 11. Section 265.105, Family Code, as added by
19 Chapter 1257 (H.B. 2630), Acts of the 84th Legislature, Regular
20 Session, 2015, is amended to read as follows:

21 Sec. 265.105. RULES. The ~~[executive]~~ commissioner of the
22 department ~~[Health and Human Services Commission]~~ may adopt rules
23 as necessary to implement this subchapter.

24 SECTION 12. Section 265.106, Family Code, is amended to
25 read as follows:

26 Sec. 265.106. PARTNERSHIP PROGRAM STANDARDS. The
27 ~~[executive]~~ commissioner, with the assistance of the Nurse-Family

1 Partnership National Service Office, shall adopt standards for the
2 partnership programs funded under this subchapter. The standards
3 must adhere to the Nurse-Family Partnership National Service Office
4 program model standards and guidelines that were developed in
5 multiple, randomized clinical trials and have been tested and
6 replicated in multiple communities.

7 SECTION 13. Section 265.109(a), Family Code, is amended to
8 read as follows:

9 (a) The department, with the assistance of the Nurse-Family
10 Partnership National Service Office, shall:

11 (1) adopt performance indicators that are designed to
12 measure a grant recipient's performance with respect to the
13 partnership program standards adopted by the [~~executive~~]
14 commissioner under Section 265.106;

15 (2) use the performance indicators to continuously
16 monitor and formally evaluate on an annual basis the performance of
17 each grant recipient; and

18 (3) prepare and submit an annual report, not later
19 than December 1 of each year, to the Senate Health and Human
20 Services Committee, or its successor, and the House Human Services
21 Committee, or its successor, regarding the performance of each
22 grant recipient during the preceding state fiscal year with respect
23 to providing partnership program services.

24 SECTION 14. Section 266.001(1-a), Family Code, is amended
25 to read as follows:

26 (1-a) "Commissioner" [~~"Commission"~~] means the
27 commissioner of the Department of Family and Protective Services

1 ~~[Health and Human Services Commission]~~.

2 SECTION 15. Section 266.003, Family Code, is amended to
3 read as follows:

4 Sec. 266.003. MEDICAL SERVICES FOR CHILD ABUSE AND NEGLECT
5 VICTIMS. (a) The department ~~[commission]~~ shall collaborate with
6 health care and child welfare professionals to design a
7 comprehensive, cost-effective medical services delivery model,
8 either directly or by contract, to meet the needs of children served
9 by the department. The medical services delivery model must
10 include:

11 (1) the designation of health care facilities with
12 expertise in the forensic assessment, diagnosis, and treatment of
13 child abuse and neglect as pediatric centers of excellence;

14 (2) a statewide telemedicine system to link department
15 investigators and caseworkers with pediatric centers of excellence
16 or other medical experts for consultation;

17 (3) identification of a medical home for each foster
18 child on entering foster care at which the child will receive an
19 initial comprehensive assessment as well as preventive treatments,
20 acute medical services, and therapeutic and rehabilitative care to
21 meet the child's ongoing physical and mental health needs
22 throughout the duration of the child's stay in foster care;

23 (4) the development and implementation of health
24 passports as described in Section 266.006;

25 (5) establishment and use of a management information
26 system that allows monitoring of medical care that is provided to
27 all children in foster care;

1 (6) the use of medical advisory committees and medical
2 review teams, as appropriate, to establish treatment guidelines and
3 criteria by which individual cases of medical care provided to
4 children in foster care will be identified for further, in-depth
5 review;

6 (7) development of the training program described by
7 Section 266.004(h);

8 (8) provision for the summary of medical care
9 described by Section 266.007; and

10 (9) provision for the participation of the person
11 authorized to consent to medical care for a child in foster care in
12 each appointment of the child with the provider of medical care.

13 (b) The department [~~commission~~] shall collaborate with
14 health and human services agencies, community partners, the health
15 care community, and federal health and social services programs to
16 maximize services and benefits available under this section.

17 (c) The [~~executive~~] commissioner shall adopt rules
18 necessary to implement this chapter.

19 SECTION 16. Sections 266.006(a), (b), and (e), Family Code,
20 are amended to read as follows:

21 (a) The [~~commission, in conjunction with the~~] department,
22 [~~and~~] with the assistance of physicians and other health care
23 providers experienced in the care of foster children and children
24 with disabilities and with the use of electronic health records,
25 shall develop and provide a health passport for each foster child.
26 The passport must be maintained in an electronic format and use [~~the~~
27 ~~commission's and~~] the department's existing computer resources to

1 the greatest extent possible.

2 (b) The [~~executive~~] commissioner shall adopt rules
3 specifying the information required to be included in the passport.
4 The required information may include:

5 (1) the name and address of each of the child's
6 physicians and health care providers;

7 (2) a record of each visit to a physician or other
8 health care provider, including routine checkups conducted in
9 accordance with the Texas Health Steps program;

10 (3) an immunization record that may be exchanged with
11 ImmTrac;

12 (4) a list of the child's known health problems and
13 allergies;

14 (5) information on all medications prescribed to the
15 child in adequate detail to permit refill of prescriptions,
16 including the disease or condition that the medication treats; and

17 (6) any other available health history that physicians
18 and other health care providers who provide care for the child
19 determine is important.

20 (e) The department [~~commission~~] shall provide training or
21 instructional materials to foster parents, physicians, and other
22 health care providers regarding use of the health passport.

23 SECTION 17. Sections 266.008(a) and (d), Family Code, are
24 amended to read as follows:

25 (a) The department [~~commission~~] shall develop an education
26 passport for each foster child. The department [~~commission, in~~
27 ~~conjunction with the department,~~] shall determine the format of the

1 passport. The passport may be maintained in an electronic format.
2 The passport must contain educational records of the child,
3 including the names and addresses of educational providers, the
4 child's grade-level performance, and any other educational
5 information the department [~~commission~~] determines is important.

6 (d) The department [~~and the commission~~] shall collaborate
7 with the Texas Education Agency to develop policies and procedures
8 to ensure that the needs of foster children are met in every school
9 district.

10 SECTION 18. Section 531.001(4), Government Code, is amended
11 to read as follows:

12 (4) "Health and human services agencies" includes the:
13 (A) Department of Aging and Disability Services;
14 (B) Department of State Health Services; and
15 (C) Department of Assistive and Rehabilitative
16 Services[~~, and~~
17 [~~(D) Department of Family and Protective~~
18 ~~Services~~].

19 SECTION 19. (a) Section 531.02013, Government Code, is
20 amended to read as follows:

21 Sec. 531.02013. FUNCTIONS REMAINING WITH CERTAIN AGENCIES.
22 The following functions are not subject to transfer under Sections
23 531.0201 and 531.02011:

24 (1) the functions of the Department of Family and
25 Protective Services, including the statewide intake of reports and
26 other information, related to the following:

27 (A) child protective services, including

1 services that are required by federal law to be provided by this
2 state's child welfare agency;

3 (B) adult protective services, other than
4 investigations of the alleged abuse, neglect, or exploitation of an
5 elderly person or person with a disability:

6 (i) in a facility operated, or in a facility
7 or by a person licensed, certified, or registered, by a state
8 agency; or

9 (ii) by a provider that has contracted to
10 provide home and community-based services; ~~and~~

11 (C) prevention and early intervention services;
12 and

13 (D) investigations of alleged abuse or neglect
14 occurring at a child-care facility, including a residential
15 child-care facility, as those terms are defined by Section 42.002,
16 Human Resources Code; and

17 (2) the public health functions of the Department of
18 State Health Services, including health care data collection and
19 maintenance of the Texas Health Care Information Collection
20 program.

21 (b) Notwithstanding any provision of Subchapter A-1,
22 Chapter 531, Government Code, or any other law, the responsibility
23 for conducting investigations of reports of abuse or neglect
24 occurring at a child-care facility, including a residential
25 child-care facility, as those terms are defined by Section 42.002,
26 Human Resources Code, may not be transferred to the Health and Human
27 Services Commission and remains the responsibility of the

1 Department of Family and Protective Services.

2 (c) As soon as possible after the effective date of this
3 section, the commissioner of the Department of Family and
4 Protective Services shall transfer the responsibility for
5 conducting investigations of reports of abuse or neglect occurring
6 at a child-care facility, including a residential child-care
7 facility, as those terms are defined by Section 42.002, Human
8 Resources Code, to the child protective services division of the
9 department. The commissioner shall transfer appropriate
10 investigators and staff as necessary to implement this section.

11 (d) This section takes effect immediately if this Act
12 receives a vote of two-thirds of all the members of each house, as
13 provided by Section 39, Article III, Texas Constitution. If this
14 Act does not receive the vote necessary for this section to take
15 immediate effect, this section takes effect on the 91st day after
16 the last day of the legislative session.

17 SECTION 20. Section 531.0202(a), Government Code, is
18 amended to read as follows:

19 (a) Each of the following state agencies and entities is
20 abolished on a date that is within the period prescribed by Section
21 531.02001(1), that is specified in the transition plan required
22 under Section 531.0204 for the abolition of the agency or entity,
23 and that occurs after all of the agency's or entity's functions have
24 been transferred in accordance with Section 531.0201:

25 (1) the Department of Assistive and Rehabilitative
26 Services;

27 (2) the Health and Human Services Council;

- 1 (3) the Aging and Disability Services Council;
- 2 (4) the Assistive and Rehabilitative Services
- 3 Council;
- 4 (5) [~~the Family and Protective Services Council,~~
- 5 ~~(6)~~ the State Health Services Council; and
- 6 (6) [~~(7)~~] the Texas Council on Autism and Pervasive
- 7 Developmental Disorders.

8 SECTION 21. Section 531.0206(a), Government Code, is

9 amended to read as follows:

10 (a) The Sunset Advisory Commission shall conduct a

11 limited-scope review of the commission during the state fiscal

12 biennium ending August 31, 2023, in the manner provided by Chapter

13 325 (Texas Sunset Act). The review must provide:

14 (1) an update on the commission's progress with

15 respect to the consolidation of the health and human services

16 system mandated by this subchapter, including the commission's

17 compliance with the transition plan required under Section

18 531.0204;

19 (2) an evaluation and recommendations regarding the

20 need to continue [~~the Department of Family and Protective Services~~

21 ~~and~~] the Department of State Health Services as a state agency

22 [~~agencies~~] separate from the commission; and

23 (3) any additional information the Sunset Advisory

24 Commission determines appropriate, including information regarding

25 any additional organizational changes the Sunset Advisory

26 Commission recommends.

27 SECTION 22. Sections 40.0026 and 40.0027, Human Resources

1 Code, as effective on September 1, 2017, are amended to read as
2 follows:

3 Sec. 40.0026. REFERENCES IN LAW MEANING DEPARTMENT. In
4 this code or any other law, a reference to the department or the
5 commission in relation to a function described by Section
6 40.0025(b) or an administrative support function for the department
7 means the department. [~~A reference in law to the department in~~
8 ~~relation to any other function has the meaning assigned by Section~~
9 ~~531.0011, Government Code.~~]

10 Sec. 40.0027. REFERENCES IN LAW MEANING COMMISSIONER OR
11 DESIGNEE. In this code or in any other law, a reference to the
12 commissioner or the executive commissioner in relation to a
13 function described by Section 40.0025(b) or an administrative
14 support function for the department means the commissioner. [~~A~~
15 ~~reference in law to the commissioner in relation to any other~~
16 ~~function has the meaning assigned by Section 531.0012, Government~~
17 ~~Code.~~]

18 SECTION 23. Section 40.027, Human Resources Code, is
19 amended to read as follows:

20 Sec. 40.027. COMMISSIONER. (a) The governor [~~executive~~
21 ~~commissioner~~] shall appoint a commissioner [~~in accordance with~~
22 ~~Section 531.0056, Government Code~~]. The commissioner is to be
23 selected according to education, training, experience, and
24 demonstrated ability.

25 (b) The commissioner serves at the pleasure of the governor
26 [~~executive commissioner~~].

27 (c) The [~~Subject to the control of the executive~~

1 ~~commissioner, the~~] commissioner shall:

2 (1) act as the department's chief administrative
3 officer;

4 (2) oversee [~~in accordance with the procedures~~
5 ~~prescribed by Section 531.00551, Government Code, assist the~~
6 ~~executive commissioner in~~] the development and implementation of
7 policies and guidelines needed for the administration of the
8 department's functions;

9 (3) oversee [~~in accordance with the procedures adopted~~
10 ~~by the executive commissioner under Section 531.00551, Government~~
11 ~~Code, assist the executive commissioner in~~] the development of
12 rules relating to the matters within the department's jurisdiction,
13 including the delivery of services to persons and the rights and
14 duties of persons who are served or regulated by the department; and

15 (4) serve as a liaison between the department and
16 commission.

17 (d) The commissioner shall administer this chapter and
18 other laws relating to the department [~~under operational policies~~
19 ~~established by the executive commissioner and in accordance with~~
20 ~~the memorandum of understanding under Section 531.0055(k),~~
21 ~~Government Code, between the commissioner and the executive~~
22 ~~commissioner, as adopted by rule].~~

23 SECTION 24. Section 40.030, Human Resources Code, is
24 amended to read as follows:

25 Sec. 40.030. ADVISORY COMMITTEES. (a) The [~~executive~~
26 commissioner or the [~~executive~~] commissioner's designee may
27 appoint advisory committees in accordance with Chapter 2110,

1 Government Code.

2 (b) The [~~executive~~] commissioner shall adopt rules, in
3 compliance with Chapter 2110, Government Code, regarding the
4 purpose, structure, and use of advisory committees by the
5 department. The rules may include provisions governing:

6 (1) an advisory committee's size and quorum
7 requirements;

8 (2) qualifications for membership of an advisory
9 committee, including:

10 (A) requirements relating to experience and
11 geographic representation; and

12 (B) requirements for the department to include as
13 members of advisory committees youth who have aged out of foster
14 care and parents who have successfully completed family service
15 plans and whose children were returned to the parents, as
16 applicable;

17 (3) appointment procedures for an advisory committee;

18 (4) terms for advisory committee members; and

19 (5) compliance with Chapter 551, Government Code.

20 SECTION 25. Section 40.0505, Human Resources Code, is
21 amended to read as follows:

22 Sec. 40.0505. DIVISIONS OF DEPARTMENT [~~POWERS AND DUTIES OF~~
23 ~~COMMISSIONER, EFFECT OF CONFLICT WITH OTHER LAW~~]. (a) The
24 commissioner shall establish the following divisions and offices
25 within the department:

26 (1) an investigations division;

27 (2) a contracting division that oversees the

1 following:

- 2 (A) quality assurance;
- 3 (B) vendor oversight;
- 4 (C) contract adherence;
- 5 (D) contracting; and
- 6 (E) oversight of single source continuum
- 7 contractors providing foster care services;
- 8 (3) an office of consumer affairs;
- 9 (4) a consolidated data division; and
- 10 (5) a legal division that oversees the following:
 - 11 (A) human resources;
 - 12 (B) open records;
 - 13 (C) privacy and confidentiality;
 - 14 (D) litigation; and
 - 15 (E) contract compliance.

16 (b) The commissioner may establish additional divisions
17 within the department as the commissioner determines appropriate.

18 (c) The commissioner may assign department functions among
19 the department's divisions. [~~To the extent a power or duty given to~~
20 ~~the commissioner by this chapter or another law conflicts with~~
21 ~~Section 531.0055, Government Code, Section 531.0055 controls.]~~

22 SECTION 26. Section 40.058, Human Resources Code, is
23 amended by adding Subsection (i) to read as follows:

24 (i) The department may enter into contracts with the
25 commission or another state agency for the provision of
26 administrative support services, including payroll, procurement,
27 information resources, and rate setting.

1 SECTION 27. Subchapter A, Chapter 48, Human Resources Code,
2 is amended by adding Section 48.0021 to read as follows:

3 Sec. 48.0021. REFERENCE TO COMMISSION OR EXECUTIVE
4 COMMISSIONER. In this chapter:

5 (1) a reference to the Health and Human Services
6 Commission means the Department of Family and Protective Services;
7 and

8 (2) a reference to the executive commissioner means
9 the commissioner of the Department of Family and Protective
10 Services.

11 SECTION 28. The following provisions are repealed:

12 (1) Sections 261.001(7), 264.001(2) and (3), and
13 266.001(3), Family Code; and

14 (2) Sections 40.0506 and 40.0507, Human Resources
15 Code.

16 SECTION 29. As soon as possible after the effective date of
17 this Act, the executive commissioner of the Health and Human
18 Services Commission shall transfer the appropriate divisions,
19 resources, and personnel to the Department of Family and Protective
20 Services to allow the department to perform the general functions
21 of the department under Subchapter C, Chapter 40, Human Resources
22 Code, as amended by this Act.

23 SECTION 30. Except as otherwise provided by this Act, this
24 Act takes effect September 1, 2017.